

## Article 26.

### Real Estate Title Insurance Companies.

#### **§ 58-26-1. Purpose of organization; formation; insuring closing services; premium rates; combined premiums for lenders' coverages.**

(a) Companies may be formed in the manner provided in this Article for the purpose of furnishing information in relation to titles to real estate and of insuring owners and others interested therein against loss by reason of encumbrances and defective title; provided, however, that no such information shall be so furnished nor shall such insurance be so issued as to North Carolina real property unless and until the title insurance company has obtained the opinion of an attorney, licensed to practice law in North Carolina and not an employee or agent of the company, who has conducted or caused to be conducted under the attorney's direct supervision a reasonable examination of the title. The company shall cause to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. A company may also insure the proper performance of services necessary to conduct a real estate closing performed by an approved attorney licensed to practice in North Carolina. Provided, however, nothing in this section shall be construed to prohibit or preclude a title insurance company from insuring proper performance by its issuing agents.

(b) Repealed by Session Laws 2002-187, s. 7.1.

(b1) Domestic and foreign title insurance companies are subject to the same capital, surplus, deposit, and investment requirements that govern the formation and operation of stock casualty companies.

(c) This Article shall not be interpreted so as to imply the repeal or amendment of any of the provisions of Chapter 84 of the General Statutes of North Carolina nor of any other provisions of common law or statutory law governing the practice of law.

(d) The premium rates charged for insuring against loss by reason of encumbrances and defective title and for insuring real estate closing services shall be based on the purchase price of the real estate being conveyed or the loan amount and shall not be established as flat fees. If a title insurer has also issued title insurance protecting a lender or owner against loss by reason of encumbrances and defective title, the insurer shall charge one undivided premium for the combination of the title insurance and the closing services insurance.

(e) If the premium stated upon a policy of title insurance has been understated or overstated due to inadvertence, mistake, or miscalculation of the closing attorney or his employees, and the incident is not purposeful or part of a pattern, the Commissioner of Insurance shall not be required to impose a civil penalty or other sanction for the inadvertence, mistake, or miscalculation. (1899, c. 54, s. 38; 1901, c. 391, s. 3; Rev., s. 4745; C.S., s. 6395; 1923, c. 71; 1973, c. 128; 1985, c. 666, s. 43; 1987, c. 625, ss. 1-3; 1993, c. 129, s. 1; c. 504, s. 15; 2002-187, ss. 7.1, 7.2; 2018-38, s. 2.1.)

#### **§ 58-26-5. Certificate of authority to do business.**

Before any such company may issue any policy or make any contract or guarantee of insurance, it shall file with the Commissioner a certified copy of the record or the certificate of its organization in the office of the Secretary of State, and obtain from the Commissioner his certificate that it has complied with the laws applicable to it and that it is authorized to do business. (1899, c. 54, s. 38; 1901, c. 391, s. 3; Rev., s. 4745; C.S., s. 6396; 1991, c. 720, s. 4.)

**§ 58-26-6. Exemption for policies issued on property affected by boundary certification.**

The Commissioner of Insurance shall not take any of the following actions with respect to a real estate title insurance company that previously operated only in South Carolina and issued a policy of title insurance in compliance under South Carolina law for a parcel of real estate now determined to be located wholly or partially in North Carolina:

- (1) Require a certificate of authority to do business as a real estate title insurance company under Article 26 of Chapter 58 of the General Statutes.
- (2) Take enforcement action against any title insurance company for failure to comply with the requirements of Article 26, 27, or 28 of Chapter 58 of the General Statutes applicable to real estate title insurance companies in North Carolina or any other statutory or regulatory requirements applicable to all insurance companies in North Carolina.

Nothing in this section is intended to prevent the Commissioner of Insurance from entering into a memorandum of agreement with the South Carolina Department of Insurance with respect to enforcement of South Carolina law against real estate title insurance companies subject to this section. (2016-23, s. 3(e).)

**§ 58-26-10. Financial statements and licenses required.**

Title insurance companies are subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-165, 58-2-180, and 58-6-5. The Commissioner may require title insurance companies to separately report their experience in insuring titles and in insuring closing services. The license to do business in this State issued to a title insurance company shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State. The Commissioner shall annually license the agents of title insurance companies. (1899, c. 54, s. 38; 1901, c. 391, s. 3; Rev., s. 4745; C.S., s. 6397; 1987, c. 625, ss. 4, 5; 1991, c. 720, s. 4; 1993, c. 504, s. 17; 1999-132, s. 11.5; 2003-212, s. 26(h).)

**§ 58-26-15. Limitation of risk.**

No real estate title insurance company shall guarantee or insure in any one risk on real property located in North Carolina more than forty percent (40%) of its combined capital and surplus without first having the approval of the Commissioner, which approval shall be endorsed upon the policy. (1945, c. 386; 1967, c. 936; 1993, c. 504, s. 18.)

**§ 58-26-20. Statutory premium reserve.**

Every domestic title insurance company shall, in addition to other reserves, establish and maintain a reserve to be known as the "statutory premium reserve" for title insurance, which shall at all times and for all purposes be considered and constitute a reserve liability of the title insurance company in determining its financial condition. (1969, c. 897; 1973, c. 1035, s. 1; 1993, c. 504, s. 19; 2002-187, s. 7.3.)

**§ 58-26-25. Amount of unearned statutory premium reserve.**

- (a) Repealed by Sessions Laws 2018-38, s. 2.2, effective October 1, 2018.

(a1) A domestic title insurance company shall establish and maintain a statutory premium reserve in an amount equal to \$0.17 per \$1,000 of net retained liability for each title insurance policy which is defined as the total liability retained by a title insurer for a single risk after taking into account any ceded liability. The net retained liability of a simultaneous issue of an owner's policy and a loan policy shall be calculated on the greater coverage amount of the two policies. The amount set aside in the statutory premium reserve shall be released over a period of 20 years, pursuant to the following formula: 30% of the aggregate sum in the year next succeeding the year of addition; 15% of the aggregate sum in the next succeeding year; 10% of the aggregate sum in each of the next succeeding two years; 5% of the aggregate sum in each of the next succeeding two years; 3% of the aggregate sum in each of the next succeeding two years; 2% of the aggregate sum in each of next succeeding seven years; and 1% of the aggregate sum in each of the next succeeding five years. The title insurer shall make authorized releases under this section in equal quarterly amounts on March 31, June 30, September 30 and December 31 annually.

(b) Repealed by Sessions Laws 2018-38, s. 2.2, effective October 1, 2018.

(b1) All amounts held as of December 31, 2018, which are in excess of the requirements of subsection (a1) of this section, shall be released on December 31, 2018, to net profits.

(c) Repealed by Sessions Laws 2018-38, s. 2.2, effective October 1, 2018.

(d) Repealed by Sessions Laws 2018-38, s. 2.2, effective October 1, 2018.

(e) A supplemental reserve shall be established in accordance with the instructions of the annual statement required by G.S. 58-2-165 and G.S. 58-26-10 consisting of the reserves necessary, when taken in combination with the reserve required by subsection (a1) of this section to cover the company's liabilities with respect to all losses, claims, and loss adjustment expenses.

(f) Each title insurer subject to the provisions of this Article shall file with its annual statement required by G.S. 58-2-165 and G.S. 58-26-10 a certification of a member in good standing of the American Academy of Actuaries. The actuarial certification required of a title insurer must conform to the annual statement instructions for title insurers of the National Association of Insurance Commissioners. (1969, c. 897; 1973, c. 1035, ss. 2-4; 1999-383, s. 1; 2002-187, ss. 7.4, 7.5, 7.6; 2018-38, s. 2.2.)

**§ 58-26-30:** Repealed by Session Laws 2002-187, s. 7.7, effective October 31, 2002.

**§ 58-26-31:** Repealed by Session Laws 2018-38, s. 2.3, effective October 1, 2018.

**§ 58-26-35:** Repealed by Session Laws 2018-38, s. 2.4, effective October 1, 2018.

**§ 58-26-40:** Repealed by Session Laws 2002-187, s. 7.10, effective October 31, 2002.

**§ 58-26-45. Registration as a lien agent.**

(a) A title insurance company or title insurance agency authorized to do business in this State that consents to serve as a lien agent upon designation by any owner pursuant to G.S. 44A-11.1 shall register with the Department by providing the following information:

- (1) Name of the title insurance company or title insurance agency consenting to serve as a lien agent pursuant to G.S. 44A-11.1.

- (2) Physical and mailing address, facsimile number and electronic mail address to which notices may be delivered to the lien agent pursuant to G.S. 44A-11.2.
  - (3) Telephone number of the lien agent.
- (b) Upon receipt of the notice of designation by the owner pursuant to G.S. 44A-11.1, a lien agent shall have the duty to do all of the following:
- (1) Provide written notice acknowledging its designation as a lien agent to the owner within three business days of receipt of the owner's written notice of designation, by the same method of delivery used by the owner in delivering the notice of designation to the lien agent.
  - (2) Receive notices to lien agent delivered by potential lien claimants pursuant to G.S. 44A-11.2.
  - (3) Maintain a record of the date and time of delivery and the information contained in each notice to lien agent received.
  - (4) Within three business days of receipt of a notice to lien agent by a potential lien claimant relating to improvements to real property for which the lien agent has been designated as the lien agent, provide written notice confirming receipt of the notice to the person providing such notice, by the same method used by the potential lien claimant in delivering the notice to lien agent. If the notice is received by email, the acknowledgment sent by the lien agent must include the email received, including the header showing the date and time of receipt.
  - (5) Within three business days of receipt of any notice to lien agent by a potential lien claimant relating to improved real property for which the lien agent has not been designated as the lien agent, provide written notice to the potential lien claimant that it is not the designated lien agent for the improved property, by the same method used by the potential lien claimant in delivering the notice to lien agent.
  - (6), (6a) Repealed by Session Laws 2013-117, s. 3, effective June 22, 2013, and applicable to improvements to real property affected hereby for which the first furnishing of labor or materials at the site of the improvements is on or after that date.
  - (7) Provide written notice of the potential lien claimants having delivered notice to lien agent pursuant to G.S. 44A-11.2, including the information relating to any contractor identified by the owner pursuant to G.S. 44A-11.2(g), and relating to any design professional identified by the owner pursuant to G.S. 44A-11.2(h), within one business day of receiving a request from any of the following persons or their authorized agents:
    - a. An owner of the improved property.
    - b. A title insurance company or title insurance agency issuing a policy of title insurance on the improved property.
    - c. A contracted purchaser of the improved property.
    - d. A potential lien claimant.
    - e. A closing attorney, lender, or settlement agent as defined in G.S. 45A-3(15) involved in a transaction involving the improved property.

In responding to a request pursuant to this subdivision, the lien agent shall include the information provided by each potential lien claimant pursuant to

G.S. 44A-11.2(i)(1) and G.S. 44A-11.2(i)(2) and, if specifically requested, a copy of each notice to lien agent received by the lien agent.

- (8) Transfer all notices received and other documentation thereof to any successor lien agent designated by the owner upon termination under G.S. 44A-11.1(d).
- (9) Receive cancellations of notices to lien agent and renewals of notices to lien agent pursuant to G.S. 44A-11.2.

(c) A registered lien agent may revoke its consent and be removed from the list of lien agents by providing written notification of its revocation of consent to the Department of Insurance and to all owners by whom the lien agent has been designated pursuant to G.S. 44A-11.1 at least 30 days in advance of the effective date of its revocation of consent.

(d) For services rendered pursuant to each designation as a lien agent for improvements to real property comprising one- or two-family dwellings, a lien agent shall collect a fee of thirty dollars (\$30.00) from the owner. For services rendered pursuant to each designation as a lien agent for all other improvements to real property, the lien agent shall collect a fee of fifty-eight dollars (\$58.00) from the owner.

(e) The Department shall publish on its Web site a current list of lien agents registered pursuant to this section. (2012-158, s. 3; 2013-16, s. 7; 2013-117, s. 3; 2017-168, s. 3.)